

Senate Bill 534

By: Senators Bulloch of the 11th and Hamrick of the 30th

AS PASSED

AN ACT

To amend Titles 10, 29, and 53 of the Official Code of Georgia Annotated, relating respectively to commerce, guardian and ward, and wills, trusts, and administration of estates, so as to correct cross-references from the enactment of Ga. L. 2004, p. 161; to allow temporary petitions for guardianships to be filed in the county where the minor is located under certain circumstances; to provide for distribution of the estate of an intestate minor or adult ward by the conservator; to provide for payment of expenses of certain hearings under certain circumstances; to change the amount of the funds for which a probate judge can be legal custodian; to change provisions relating to satisfaction of requirements of authentication or exemplification; to allow probate court judges to hold certain funds for a missing heir or beneficiary under a decedent's will; to change certain provisions relating to bonds for public guardians; to specify that when a trustee's compensation is not specified in the trust instrument it shall be based on the compensation schedule of conservators; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 10 of the Official Code of Georgia Annotated, relating to commerce, is amended by striking Code Section 10-6-4, relating to authorization for fiduciaries to convey by attorneys in fact, and inserting in lieu thereof the following:

"10-6-4.

Executors, administrators, guardians, conservators, and trustees are authorized to sell and convey property by attorneys in fact in all cases where they may lawfully sell and convey in person."

SECTION 2.

Said title is further amended by striking Code Section 10-6-30, relating to the requirement that agents and fiduciaries keep accounts, and inserting in lieu thereof the following:

"10-6-30.

It shall be the duty of agents, trustees, administrators, guardians, conservators, receivers, and all other fiduciaries to keep their accounts in a regular manner and to be always ready with them supported by proper vouchers; neglect of this duty shall be ground for charging them with interest on balances on hand and with costs."

SECTION 3.

Title 29 of the Official Code of Georgia Annotated, relating to guardians and wards, is amended by striking subsection (b) and paragraph (3) of subsection (c) of Code Section 29-2-5, relating to petitions for temporary guardianships, and inserting in lieu thereof the following:

"(b) The petition shall be filed in the probate court of the county of domicile of the petitioner; however, if the petitioner is not a domiciliary of this state, the petition may be filed in the probate court of the county where the minor is found."

"(3) A statement that the petitioner has physical custody of the minor and:

(A) Is domiciled in the county in which the petition is being filed; or

(B) Is not a domiciliary of this state and the petition is being filed in the county where the minor is found;"

SECTION 4.

Said title is further amended by striking subsection (b) of Code Section 29-2-30, relating to circumstances when guardianship terminates, and inserting in lieu thereof the following:

"(b) Within six months prior to the date the minor reaches 18 years of age, the guardian or any other interested person may file a petition for the appointment of a guardian for the minor when that minor becomes an adult, in accordance with the provisions of Article 2 of Chapter 4 of this title, to take effect on or after the date the minor reaches 18 years of age."

SECTION 5.

Said title is further amended by striking subsection (h) of Code Section 29-3-3, relating to the definition of "gross settlement" and the compromise of a claim, and inserting in lieu thereof the following:

"(h) If an order of approval is obtained from the court based upon the best interest of the minor, the natural guardian or conservator is authorized to compromise any contested or

doubtful claim in favor of the minor without receiving consideration for such compromise as a lump sum. Without limiting the foregoing, the compromise may be in exchange for an arrangement that defers receipt of part or all of the consideration for the compromise until after the minor reaches the age of majority and may involve a structured settlement or creation of a trust on terms which the court approves."

SECTION 6.

Said title is further amended by striking subsection (a) of Code Section 29-3-6, relating to power to appoint a conservator, and inserting in lieu thereof the following:

"(a) The court of the county in which a minor is found or in which the proposed conservator is domiciled shall have the power to appoint a conservator for the minor."

SECTION 7.

Said title is further amended by striking paragraph (6) of subsection (c) of Code Section 29-3-22, relating to the power of the conservator, and inserting in lieu thereof the following:

"(6) To release the debtor and compromise a debt which is in the amount of more than \$15,000.00 when the collection of the debt is doubtful;"

SECTION 8.

Said title is further amended by striking the introductory language of subsection (a) of Code Section 29-3-50, relating to compensation for conservators, and inserting in lieu thereof the following:

"(a) Other than a temporary substitute conservator, a conservator shall be entitled to compensation for services rendered equal to:"

SECTION 9.

Said title is further amended by adding a new subsection to the end of Code Section 29-3-71, relating to final settlements and return of property to a minor, to read as follows:

"(e) When a minor ward for whom the county administrator or county guardian has been previously appointed as conservator dies intestate, the conservator shall proceed to distribute the minor ward's estate in the same manner as if the conservator had been appointed administrator of the estate. The sureties on the conservator's bond shall be responsible for the conservator's faithful administration and distribution of the estate."

SECTION 10.

Said title is further amended by striking paragraph (3) of subsection (c) of Code Section 29-4-15, relating to prerequisite findings prior to the appointment of emergency guardians, and inserting in lieu thereof the following:

"(3) Order an evaluation of the proposed ward by a physician who shall be a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, other than the physician, psychologist, or licensed clinical social worker who completed the affidavit attached to the petition pursuant to paragraph (1) of subsection (d) of Code Section 29-4-10. The evaluation shall be conducted within 72 hours of the time the order was issued and a written report shall be furnished to the court and made available to the parties within this time frame, which evaluation and report shall be governed by the provisions of subsection (d) of Code Section 29-4-11;"

SECTION 11.

Said title is further amended by adding a new Code Section 29-4-17 to the end of Article 2 of Chapter 4, relating to procedures for appointment of guardians of adults, to read as follows:

"29-4-17.

The amounts actually necessary or requisite to defray the expenses of any hearing held under this article shall be paid:

- (1) From the estate of the ward if a guardianship is ordered;
- (2) By the petitioner if no guardianship is ordered; or
- (3) By the county in which the proposed ward is domiciled or by the county in which the hearing was held only if the person who actually presided over the hearing executes an affidavit or includes a statement in the order that the party against whom costs are cast pursuant to paragraph (1) or (2) of this Code section appears to lack sufficient assets to defray the expenses."

SECTION 12.

Said title is further amended by striking subsection (a) of Code Section 29-5-3, relating to order of preference in selecting a conservator, and inserting in lieu thereof the following:

"(a) The court shall appoint as conservator that person who shall best serve the interest of the adult taking into consideration the order of preferences set forth in this Code section.

The court may disregard a person who has preference and appoint a person who has a lower preference or no preference; provided, however, that the court may disregard the preferences listed in paragraph (1) of subsection (b) of this Code section only upon good cause shown."

SECTION 13.

Said title is further amended by striking subsection (a) of Code Section 29-5-15, relating to review of a petition for emergency conservatorship, and inserting in lieu thereof the following:

"(a) Upon the filing of a petition for an emergency conservatorship, the court shall review the petition and the affidavit, if any, to determine whether there is probable cause to believe that the proposed ward is in need of an emergency conservator within the meaning of Code Section 29-5-14."

SECTION 14.

Said title is further amended by adding a new Code Section 29-5-17 to the end of Article 2 of Chapter 5, relating to petitions for appointed conservators of adults, to read as follows:

"29-5-17.

The amounts actually necessary or requisite to defray the expenses of any hearing held under this article shall be paid:

- (1) From the estate of the ward if a conservatorship is ordered;
- (2) By the petitioner if no conservatorship is ordered; or
- (3) By the county in which the proposed ward is domiciled or by the county in which the hearing is held if the proposed ward is not a domiciliary of the state. The amounts shall be paid by the appropriate county upon the warrant of the court of the county where the hearing was held. Payment by the county shall be required, however, only if the person who actually presides over the hearing executes an affidavit or includes a statement in the order that the party against whom costs are cast pursuant to paragraph (1) or (2) of this Code section appears to lack sufficient assets to defray the expenses."

SECTION 15.

Said title is further amended by adding a new subsection to the end of the Code Section 29-5-72, relating to termination of conservatorship and death of a ward, to read as follows:

"(g) When a ward for whom the county administrator or county guardian has been previously appointed as conservator dies intestate, the conservator shall proceed to distribute the ward's estate in the same manner as if the conservator had been appointed administrator of the estate. The sureties on the conservator's bond shall be responsible for the conservator's faithful administration and distribution of the estate."

SECTION 16.

Said title is further amended by striking Code Section 29-6-1, relating to judges of probate courts as custodians of certain funds, and inserting in lieu thereof the following:

"29-6-1.

The judges of the probate courts are, in their discretion, made the legal custodians and distributors of all moneys up to \$15,000.00 due and owing to any minor or incapacitated adult who is in need of a conservator but who has no legal and qualified conservator; and the judges are authorized to receive and collect all such moneys arising from insurance policies, benefit societies, legacies, inheritances, or any other source. Without any appointment or qualifying order, the judge is authorized to take charge of the moneys or funds of the minor or adult by virtue of the judge's office as judge of the probate court in the county of residence of the minor or adult; provided, however, that notice shall be given to the living parents of a minor, if any, or the guardian of an adult, if any. The certificate of the judge that no legally qualified conservator has been appointed shall be conclusive and shall be sufficient authority to justify any debtor in making payment on claims made by the judge."

SECTION 17.

Said title is further amended by striking paragraph (1) of Code Section 29-6-9, relating to circumstances under which custodial property shall be returned, and inserting in lieu thereof the following:

"(1) A conservator if the custodial funds exceed \$15,000.00;"

SECTION 18.

Said title is further amended by striking subsection (a) of Code Section 29-7-15, relating to compensation for guardian, and inserting in lieu thereof the following:

"(a) As compensation for service, a VA guardian shall earn a commission of 5 percent on all income of the ward coming into the VA guardian's hands during any months while the

VA guardian serves. If the ward receives at least \$350.00 per month, the minimum fee shall be \$35.00 per month."

SECTION 19.

Said title is further amended by striking Code Section 29-8-5, relating to revocation of letters of guardianship or conservatorship or other court orders necessary for the good of a ward, and inserting in lieu thereof the following:

"29-8-5.

The court may, for good cause shown, as provided in Code Section 29-5-92, revoke the letters of guardianship or conservatorship of the county guardian, require additional security on the county guardian's bond, or issue any other order as is expedient and necessary for the good of any particular conservatorship in the hands of the county guardian."

SECTION 20.

Said title is further amended by striking Code Section 29-9-13, relating to satisfaction of requirements of authentication or exemplification, and inserting in lieu thereof the following:

"29-9-13.

(a) Except as otherwise provided by law or directed by the judge with respect to any particular proceeding, the date on or before which any objection is required to be filed shall be not less than ten days after the date the person is personally served. For persons within the United States who are served by registered or certified mail or statutory overnight delivery, return receipt requested, the date on or before any objection is required to be filed shall not be less than 14 days from the date of mailing or delivering; provided, however, that if a return receipt from any recipient is received by the court within 14 days from the date of mailing or delivering, the date on or before which any objection is required to be filed by such recipient shall be ten days from the date of receipt as shown on the return receipt. For a person outside the United States who is served by registered or certified mail or statutory overnight delivery, return receipt requested, the date on or before any objection is required to be filed shall not be less than 30 days from the date the citation is mailed or delivered; provided, however, that if the return receipt from any recipient is received by the court during such 30 day period the date on or before which any objection is required to be filed by such recipient shall not be earlier than ten days from the date of receipt shown on

such return receipt. For a person served by publication, the date on or before which any objection is required to be filed shall be no sooner than the first day of the week following publication once each week for four weeks.

(b) Except as otherwise provided by law or directed by the judge with respect to any particular proceeding, the date on which any required hearing shall be held shall be the date by which any objection is required to be filed or such later date as the court may specify. When the matter is set for hearing on a date that was not specified in the citation, the court shall send by first-class mail a notice of the time of the hearing to the petitioner and all parties who have served responses at the addresses given by each of them in their pleadings.

(c) Notwithstanding the other provisions of this Code section, the date by which objections must be filed or on which the hearing shall be held shall be no earlier than ten days after the date of service on any person who is entitled to personal service."

SECTION 21.

Said title is further amended by striking Code Section 29-10-5, relating to bonds for public guardians, and inserting in lieu thereof the following:

"29-10-5.

A public guardian shall give bond with good security, to be judged by the court, in a sum of not less than \$10,000.00. The bond shall be payable to the court for the benefit of all concerned. It shall be attested by the judge or clerk of the court and shall be conditioned upon the faithful discharge of the public guardian's duty as such, as required by law. "

SECTION 22.

Title 53 of the Official Code of Georgia Annotated, relating to wills, trusts, and administration of estates, is amended by adding a new Code Section 53-9-8 to the end of Article 1 of Chapter 9, relating to administration of estates for missing persons and persons believed to be dead, to read as follows:

"53-9-8.

(a) The judges of the probate court, in their discretion, shall also be the depositories for and custodians of all moneys of any heir or beneficiary of any estate who cannot be located by the personal representative for moneys that may be distributed to the heir or beneficiary. Any personal representative shall be authorized to pay over to the judge any such moneys;

and the judge shall be authorized to take charge thereof as provided for in this Code section.

(b) The judge shall turn over to the Department of Revenue all custodial property held pursuant to this Code section 15 years after receipt by the judge of such property."

SECTION 23.

Said title is further amended by striking subsection (b) of Code Section 53-12-173, relating to compensation for services, and inserting in lieu thereof the following:

"(b) If the trustee's compensation is not specified in the trust instrument or any separate written agreement, the trustee, for services rendered, shall be entitled to the same compensation as conservators receive for similar services as set forth in Code Section 29-5-50. The trustee's compensation may be paid from time to time as the fees are earned, except that the fees for delivery of property in kind, when specifically approved by the judge of the probate court, may be paid in advance of actual distribution when the judge of the probate court shall determine that this is equitable and that the condition of the estate permits it."

SECTION 24.

All laws and parts of laws in conflict with this Act are repealed.